

## REMARKS/ARGUMENTS

Claims 1-5, 7, 12, 13, 15, 21, 22, and 51 are pending in the present application. Claim 51 has been amended herewith. Reconsideration of the claims is respectfully requested.

### **I. 35 U.S.C. § 103, Obviousness**

Claims 1-3, 12, 21 and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Thomas (U.S. Patent No. 5,885,087), hereinafter “Thomas” in view of Sugimoto (U.S. Patent No. 6,755,661), hereinafter “Sugimoto”. This rejection is respectfully traversed.

With respect to Claim 1, such claim recites “wherein the customized user alert is periodically presented to the test taker based on an alert schedule for the specific test question after at least one time period indicated by the alert schedule, wherein the customized user alert includes an amount of time remaining to answer the specific test question, a suggested amount of time to spend on the specific test question, and an amount of time allotted to complete all of the test questions”. As can be seen, there is a customized user alert that is periodically presented to the user based on an alert schedule for the specific test question, and this customized user alert is presented to the test taker *after at least one time period indicated by the alert schedule*. In addition, per these features of Claim 1, this same customized user alert includes (1) an amount of time *remaining to answer the specific test question*, (2) a *suggested amount of time to spend on this specific test question*, and (3) an amount of time allotted to complete *all of the test questions*. None of the cited references teach or suggest such a customized user alert that includes all of these claimed features – nor has the Examiner alleged a teaching/suggestion of such a customized user alert having all of these claimed features. Therefore, Claim 1 has been erroneously rejected<sup>1</sup> as the Examiner has failed to properly establish a prima facie showing of obviousness.<sup>2</sup>

Specifically with respect to the claimed customized user alert, the Examiner merely alleges that the Thomas describes that the time taken by a user to answer a question is (i) tracked, (ii) displayed, and (iii) compared to a predetermined time. This assertion does not establish any teaching or suggestion of the claimed customized user alert. In addressing the cited Sugimoto reference, the Examiner alleges that

---

<sup>1</sup> If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

<sup>2</sup> In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *Id.* **All words in a claim must be considered** in judging the patentability of that claim against the prior art.” MPEP 2143.03; *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) (emphasis added by Applicants).

Sugimoto describes ‘a preset time limit for each question’. These are the only time-based teachings that are alleged to be taught by the cited references. Thus, the Examiner has failed to establish a teaching or suggestion of the specific time-based features pertaining to the customized user alert, including that the customized user alert is periodically presented to the test taker based on an alert schedule for the specific test question **after at least one time period** indicated by the alert schedule, *wherein the customized user alert includes* (1) **an amount of time remaining** to answer the specific test question, (2) **a suggested amount of time** to spend on the specific test question, and (3) **an amount of time allotted** to complete all of the test questions. Thus, it is urged that Claim 1 has been erroneously rejected due to this prima facie obviousness deficiency with respect to the time parameters associated with the customized user alert that is periodically sent to the user.

In addition, Claim 1 includes detailed characteristics associated with a customized alert profile (as contrasted with the customized user alert previously described hereinabove). Claim 1 also recites “wherein the alert schedule is generated for the test taker based on a *customized alert profile* for the test taker, wherein the suggested amount of time to spend on the specific test question is calculated for the test taker based on the customized alert profile, and wherein the customized alert profile includes previous performance information of the test taker, information to associate a level of difficulty of the specific test question with a capability category of the test taker to answer the specific test question, and at least one alert threshold for each of the test questions”. As can be seen, this customized alert profile (that is used in generating the alert schedule that is used to send the customized user alerts that were previously described) includes (1) previous performance information of the test taker, (2) information to associate a level of difficulty of the specific test question with a capability category of the test taker to answer the specific test question, and (3) at least one alert threshold for each of the test questions. None of the cited references teach or suggest such a customized user profile.

In rejecting this aspect of Claim 1, the Examiner states that Thomas describes player profiles in order to provide a history of the user’s progress including performance by subject or topic. At a fundamental level, such Thomas player profile is not used in generating any type of alert schedule (that is used to present a customized user alert to a test taker), as is provided by the features of Claim 1. Further, such Thomas player profile does not include: (i) information to associate a level of difficulty of the specific test question with a capability category of the test taker to answer the specific test question, or (ii) at least one alert threshold for each of the test questions, as is provided by the features of Claim 1.

As to the teachings of Sugimoto and a profile, the Examiner merely alleges that Sugimoto describes test taker profiles that include ‘skill level of the user’, and that the profile is used to determine questions that are presented to the test taker. At a fundamental level, such Sugimoto profile is not used in generating any type of alert schedule (that is used to present a customized user alert to a test taker), as is

provided by the features of Claim 1. Further, such Sugimoto profile does not include: (i) information to associate a level of difficulty of the specific test question with a capability category of the test taker to answer the specific test question, or (ii) at least one alert threshold for each of the test questions, as is provided by the features of Claim 1.

Thus, as neither cited reference describes (1) a user profile that includes: (i) information to associate a level of difficulty of the specific test question with a *capability category of the test taker* to answer the specific test question, or (ii) at least one alert threshold for *each* of the test questions; or (2) a user profile that is used to generate an alert schedule (and this alert schedule is used to periodically present a customized user alert to a test taker, as previously described), it is further urged that Claim 1 has been erroneously rejected due to this prima facie obviousness deficiency with respect to the characteristics and use of the claimed customized alert profile.

In conclusion with respect to Claim 1, none of the cited references teach or suggest (1) the three different time parameters associated with the customized user alert that is periodically sent to the user (which advantageously facilitates providing the test taker with detailed time parameter information pertaining to various aspects of taking the test), (2) a user profile that includes: (i) information to associate a level of difficulty of the specific test question with a capability category of the test taker to answer the specific test question, or (ii) at least one alert threshold for each of the test questions; or (3) a user profile that is used to generate an alert schedule (and this alert schedule is advantageously used to periodically present a customized user alert to a test taker). Therefore, it is urged that Claim 1 has been erroneously rejected, and further that such claim is in condition for allowance.

Applicants initially traverse the rejection of Claims 2, 3, 12, 21 and 22 for reasons given above with respect to Claim 1 (of which Claims 2, 3, 12, 21 and 22 depend upon).

Further with respect to Claim 3, such claim recites “wherein the presentation of the test questions is based on levels of difficulty of the test questions and the capability category of the test taker to answer the test questions”. As can be seen, the presentation of the test questions is based on two criteria: (1) levels of difficulty of the test questions, and (2) the capability category of the test taker to answer the test questions. None of the cited references teach or suggest these two criteria, in combination, being used in the presentation of test questions. For example, Sugimoto describes a question database that stores questions, and this question database includes the number of solvers and the number of solvers who return the correct answer (Sugimoto col. 6, lines 3-5), and a skill category code (Sugimoto col. 6, line 6). Neither of these stored database items describe that the presentation of the test questions is based on levels of difficulty of the test questions and the capability category of the test taker to answer the test questions. Thus, it is further shown that Claim 3 has been erroneously rejected due to this additional prima facie obviousness deficiency.

Therefore, the rejection of Claims 1-3, 12, 21 and 22 under 35 U.S.C. § 103 has been overcome.

**II. 35 U.S.C. § 103, Obviousness**

Claims 4, 5, 7 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Thomas in view of Sugimoto as applied to the claims above and in view of admitted prior art. This rejection is respectfully traversed.

Applicants traverse the rejection of Claims 4, 5, 7 and 13 for similar reasons to those given above with respect to Claim 1 (of which Claims 4, 5, 7 and 13 depend upon).

Therefore, the rejection of Claims 4, 5, 7 and 13 under 35 U.S.C. § 103 has been overcome.

**III. 35 U.S.C. § 103, Obviousness**

Claim 15 stands rejected under 35 U.S.C. § 103 as being unpatentable over Thomas in view of Sugimoto as applied to the Claims above and further in view of Kershaw et al. (U.S. Patent No. 5,827,070 A), hereinafter “Kershaw”. This rejection is respectfully traversed.

Applicants initially traverse the rejection of Claim 15 for similar reasons to those given above with respect to Claim 1 (of which Claim 15 depends upon).

Applicants further traverse the rejection of Claim 15 by showing that none of the cited references teach or suggest the claimed feature of “wherein a session identification is established for the presentation of the test questions by a proctor device and includes a proctor device identifier, and wherein outputting the test question timing data to the proctor device is based on the proctor device identifier”. Specifically, none of the cited references teach or suggest (1) a proctor device that establishes a session identification for presentation of test questions, or (2) the outputting of test question timing to such proctor device based on a proctor device identifier. In rejecting Claim 15, the Examiner merely alleges that Kershaw (i) discloses the collection of statistical data on all test takers (which does not establish a teaching of the claimed proctor device characteristics (1) and (2) identified above), and (ii) recording of a test program id, registration id, test center id, and workstation id for each tester (which does not establish a teaching of the claimed proctor device characteristics (1) and (2) identified above). Thus, it is further shown that Claim 15 has been erroneously rejected due to this additional prima facie obviousness deficiency with respect to the proctor device and its associated characteristics.

Therefore, the rejection of Claim 15 under 35 U.S.C. § 103 has been overcome.

#### **IV. 35 U.S.C. § 103, Obviousness**

Claim 51 stands rejected under 35 U.S.C. § 103 as being unpatentable over Kershaw in view of Thomas, Hoehn-Saric (U.S. Patent No. 5,915,973), hereinafter “Hoehn-Saric” and Sugimoto. This rejection is respectfully traversed.

With respect to Claim 51, such claim recites “wherein the test question timing data is output to said proctor device, based on said proctor device identifier, in response to determining that evidence of greater than expected response time to the specific test question is present” and “wherein the remotely located user can send instant messages to and receive instant messages from said proctor device associated with said examination server and wherein said proctor device can send instant messages to and receive instant messages from the plurality of remotely located users”. None of the cited references teach or suggest – nor has the Examiner alleged any teaching or suggestion of – such timing data being output to a proctor device, where such proctor device facilitates instant messaging communication with a plurality of remotely located users. Thus, Claim 51 has been erroneously rejected as the Examiner has failed to establish a prima facie showing of obviousness with respect to Claim 51.

Further with respect to Claim 51, such claim recites “generating a customized user alert message after the test question timing data exceeds an alert threshold while continuing to present the specific test question for the remotely located user to answer, wherein the customized user alert message apprises the remotely located user that the elapsed time is excessive for the specific test question, wherein the customized user alert message is periodically presented to the remotely located user based on an alert schedule for the specific test question after at least one time period indicated by the alert schedule, wherein the customized user alert message includes an amount of time remaining to answer the specific test question, a suggested amount of time to spend on the specific test question, and an amount of time allotted to complete all of the test questions”. As can be seen, there is a customized user alert that is generated after the test question timing data exceeds an alert threshold while continuing to present the specific test question for the remotely located user to answer. In addition, per these features of Claim 51, this same customized user alert message (1) apprises the remotely located user that the elapsed time is excessive for the specific test question, (2) is periodically presented to the remotely located user based on an alert schedule for the specific test question after at least one time period indicated by the alert schedule, and (3) includes (i) an amount of time remaining to answer the specific test question, (ii) a suggested amount of time to spend on the specific test question, and (iii) an amount of time allotted to complete all of the test questions. None of the cited references teach or suggest such a customized user alert that includes all of these claimed features – nor has the Examiner alleged a teaching/suggestion of such a customized user alert message. Therefore, Claim 51 has been erroneously rejected as the Examiner has failed to properly establish a prima facie showing of obviousness.

In addition, Claim 51 includes details characteristics associated with a customized alert profile (as contrasted with the customized user alert previously described hereinabove). Claim 51 also recites “wherein the alert schedule is generated for the remotely located user based on a customized alert profile for the remotely located user, wherein the suggested amount of time to spend on the specific test question is calculated for the remotely located user based on the customized alert profile, and wherein the customized alert profile includes previous performance information of the remotely located user, information to associate a level of difficulty of the specific test question with a capability category of the remotely located user to answer the specific test question, and a plurality of alert thresholds for each of the test questions”. As can be seen, this customized alert profile (that is used in generating the alert schedule that is used to present the customized user alert messages to a user, as previously described) includes (1) previous performance information of the test taker, (2) information to associate a level of difficulty of the specific test question with a capability category of the test taker to answer the specific test question, and (3) a plurality of alert thresholds for each of the test questions. None of the cited references teach or suggest such a customized alert profile.

In rejecting this aspect of Claim 51, the Examiner alleges that Sugimoto describes test taker profiles that include ‘skill level of the user’, and that the profile is used to determine questions that are presented to the test taker. At a fundamental level, such Sugimoto profile is not used in generating any type of alert schedule (that is used to present the customized user alert messages to a user, as previously described), as is provided by the features of Claim 51. Further, such Sugimoto profile does not include: (i) information to associate a level of difficulty of the specific test question with a capability category of the test taker to answer the specific test question, or (ii) at least one alert threshold for each of the test questions, as is provided by the features of Claim 1.

Thus, as none of the cited references describes (1) timing data being output to a proctor device, where such proctor device facilitates instant messaging communication with a plurality of remotely located users, (2) a user profile that includes: (i) information to associate a level of difficulty of the specific test question with a capability category of the test taker to answer the specific test question, or (ii) at least one alert threshold for each of the test questions; or (3) a user profile that is used to generate an alert schedule (and this alert schedule is used to periodically present a customized user alert to a test taker, as previously described), it is urged that Claim 51 has been erroneously rejected due to this *prima facie* obviousness deficiency.

Therefore, the rejection of Claim 51 under 35 U.S.C. § 103 has been overcome.

**V. Conclusion**

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: July 28, 2008

Respectfully submitted,

/Wayne P. Bailey/

Wayne P. Bailey  
Reg. No. 34,289  
Yee & Associates, P.C.  
P.O. Box 802333  
Dallas, TX 75380  
(972) 385-8777  
Attorney for Applicants